

CIVIL SERVICE COMMISSION MINUTES

June 7, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Roy Dixon
Gordon Austin
Barry Newman

Comprising a quorum of the Commission

Absent was:

Sigrid Pate

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
June 7, 2000

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
10,13,15,18	14		

COMMENTS Motion by Austin to approve all items not held for discussion; seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Dixon: Everett Bobbitt, Esq., on behalf of **Mark Fuentes**, former employee of the Sheriff's Department, claiming a liberty interest violation.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of May 17, 2000.

Approved.

CONFIRMATION OF ASSIGNMENTS AND REASSIGNMENTS

2. Commissioner Pate: Everett Bobbitt, Esq., on behalf of **Linda Hearn**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

3. Commissioner Austin: Richard L. Pinckard, Esq., on behalf of **Roberto Pe**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

4. Commissioner Dixon: **Roberta Faford**, Quality Assurance Specialist, appealing an Order of Suspension and Charges from the Health and Human Services Agency (HHSA).

Confirmed.

5. Commissioner Brummitt: Richard L. Pinckard, Esq., on behalf of **Marco Carreon**, Deputy Sheriff, appealing an Order of Suspension and Reassignment, and Charges from the Sheriff's Department.

Confirmed.

6. Commissioner Pate: Richard L. Pinckard, Esq., on behalf of **Charlie Peterson**, Deputy Sheriff, appealing an Order of Discipline and Charges consisting of a loss of Corporal Premium Pay and Reassignment in the Sheriff's Department.

Confirmed.

7. Commissioner Austin: Richard L. Pinckard, Esq., on behalf of **Roger Baggett**, Corrections Deputy Sheriff, appealing an Order of Suspension and Reassignment, and Charges from the Sheriff's Department.

Confirmed.

8. Commissioner Dixon: James Gattey, Esq. on behalf of **Frank Gill**, Correctional Deputy Probation Officer II, from an Order of Suspension and Charges from the Probation Department.

Confirmed.

9. Commissioner Brummitt: Bradley Fields, Esq., on behalf of **Steven Ruff**, Sheriff's Sergeant, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

Confirmed.

10. Commissioner Pate: **George Blatern**, Psychiatric Nurse II, appealing an Order of Immediate Suspension and Charges and an Order of Removal and Charges from HHSA.

RECOMMENDATION: Deny Request on appeal of Order of Immediate Suspension. Assign a Hearing Officer on the appeal of the Order of Removal.

Mr. Blatern addressed the Commission, explaining that his appeal regarding the Suspension was late due to the fact that the Union was delayed in responding to his inquiries/appeal rights. He also stated that his appeal rights were not included in the various documents served on him by the Agency.

Charlene Heckerth, Personnel Officer with HHSA, responded on behalf of the Agency stating that appeal language was indeed included on the suspension/removal documents.

Larry Cook, Executive Officer, explained to the Commission that the appeal was late, and therefore should be denied. However, he further offered the Velez case as an example that if good cause is shown, the Commission may grant a hearing.

Motion by Dixon to accept staff recommendation; seconded by Austin. Carried. Commissioner Pate assigned as hearing officer regarding the Order of Removal.

Reassignments

11. Commissioner Pate as hearing officer on the appeal of **Peggy Torralva** from an Order of Demotion and Charges from the Department of the Public Defender. Commissioner Dixon previously assigned.

Confirmed.

DISCRIMINATION

Complaints

12. **Eric Enell and Mark Lewis**, alleging age and gender discrimination by the Department of Planning and land Use.

RECOMMENDATION: Assign a Hearing Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See also No. 16 below.)

Staff recommendation approved. Commissioner Newman assigned as hearing officer.

Findings

13. **Eeva Ezquerro**, Senior Account Clerk, Air Pollution Control District, alleging race (reverse) discrimination by the Air Pollution Control District. (See also No. 14 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on April 19, 2000, the Commission appointed Roy Dixon to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations of discrimination, and probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

Motion by Dixon to approve Findings and Recommendations; seconded by Newman. Carried.

SELECTION PROCESS

Complaints

14. **Eeva Ezquerro**, Senior Account Clerk, Air Pollution Control District, appealing the selection process for the classification of Junior Accountant in the Air Pollution Control District. (See also No. 13 above.)

RECOMMENDATION: Continue to the next CSC meeting pending further input from the parties.

Staff recommendation approved.

15. **Jordan Bistran**, Protective Services Worker I, HHSA appealing her non-selection for the classification of Protective Services Worker II in HHSA.

RECOMMENDATION: Deny Request.

Ms. Bistran (Appellant), recounted to the Commission her resignation from County employment on September 24, 1999, and her subsequent endeavors to be rehired as a Protective Services Worker II (PSW II). On April 7, 2000, Appellant returned as a PSW I but believes she should have returned as a PSW II. The class in which Ms. Bistran most recently gained permanent status is PSW I. Therefore, even though she left the County on September 24, 1999 as a PSW II, she is not entitled to return to the higher class since she never fulfilled a probationary period for that class.

Brett Howard representing DHR explained that the Department erred by placing appellant's name on the reemployment list for PSW II, which may have caused Appellant to believe that she would eventually be placed in the PSW II classification via that list. However, he explained further that the 12-month list Ms. Bistran was placed on had expired on March 11, 2000, and that her name is currently on the list to take the next PSW II exam scheduled for June 17, 2000.

The Commission queried Larry Cook, Executive Officer, as to the remedy available to Appellant should a hearing be granted. Mr. Cook explained that minimum to none was available should the Commission grant a hearing in this matter.

Motion by Austin to approve staff recommendation; seconded by Dixon. Carried.

16. **Eric Enell and Mark Lewis**, appealing the selection process for the classification of Code Enforcement Coordinator in the Department of Planning and Land Use.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation addressed in No. 12 above.

Staff recommendation approved.

Findings

17. **Gerardo Rivera**, appeal of removal of his name by the Department of Human Resources from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item No. 17. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Ratified.

LIBERTY INTEREST

Findings

18. Commissioner Dixon: Everett Bobbitt, Esq., on behalf of **Mark Fuentes**, former employee of the Sheriff's Department, claiming a liberty interest violation.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Conduct unbecoming an officer of the County of San Diego (challenging an inmate to hit him); Cause II - Failure of good behavior (excessive use of force); Cause III - Inefficiency (failure to document in writing the use of force); Cause IV - Failure of good behavior; Cause V - Inefficiency; and Cause VI - acts incompatible with and/or inimical to the public service.

Employee was a Deputy Sheriff in the Sheriff's Department for approximately 17 months. At the time of his termination, Employee had not concluded his probationary period, and therefore, was not entitled to a Rule VII Disciplinary hearing. However, due to the fact that prospective law enforcement employers could request reasons for Employee's termination, Employee was entitled to a Liberty Interest hearing so that he would have the opportunity to rebut the allegations of misconduct.

At the Liberty Interest hearing, the Department offered only the Skelley Report and the testimony of the Skelley Officer, both of which constituted hearsay. The Department did not present any other evidence. In an Administrative Hearing, hearsay evidence is admissible only to supplement or explain other evidence. It may not stand as the sole basis for any finding of fact unless it falls within one of the evidentiary exceptions that makes it admissible in a court of law. The Department and the Skelly Officer placed significance on an alleged statement by Employee that in retrospect, he would have handled the situations differently. However, the hearing officer felt that this comment did not constitute an admission of misconduct, but rather stated no more than the common hindsight that reveals a more optimal course of action.

Employee presented testimony at the hearing refuting the Department's primary charges and causes. The remaining causes were dependent on the primary causes and therefore could not stand alone. The hearing officer found Employee not guilty of the causes set forth in the Order

of Termination and Charges. Further, the hearing officer found that Employee's liberty interest would be violated if the Department's allegations of misconduct were disclosed to prospective law enforcement employers. The Department was ordered to retain a copy of the Decision in Employee's personnel file and make it available to persons to whom a response is given as to the reason for Employee's termination for failure of probation. Accordingly, this proposed decision shall become effective upon the date of approval by the Civil Service Commission and the Commission approve and file this report.

Motion by Dixon to approve Findings and Recommendations; seconded by Newman. Carried.

OTHER MATTERS

Extension of Temporary Appointments

19. Agriculture, Weights & Measures

A. 1 Legal Assistant I (Marjorie Van Nuis)

B. 1 Agricultural/Standard Inspector (Ronald Flemming)

20. Assessor/Recorder/County Clerk

1 Property Assessment Specialist III (Mary Ann Warshawsky)

21. Office of the District Attorney

1 Criminal Legal Secretary II (Guadalupe Gurrola)

22. Health and Human Services Agency

A. 2 Residential Care Worker Trainees (Robert Rodrigues, Eva Brosz-Munoz)

B. 1 Residential Care Worker I (Joel De La Cruz)

C. 1 Social Services Administrator III (Alice Smylie)

D. 1 Principal Administrative Analyst (Alice Weed)

23. Sheriff's Department

1 Cook (Sergio Sanchez)

RECOMMENDATION: Ratify Item Nos. 19-23.

Item Nos. 19 through 23 ratified.

24. Public Input.

ADJOURNMENT: 3:20 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JUNE 28, 2000.